

**Town of Milford
Zoning Board of Adjustment Minutes
January 15, 2015
Case #2014-22
St. Joseph Hospital
Variance**

Present: Zach Tripp, Chairman
Fletcher Seagroves, Vice Chair
Michael Thornton
Joan Dargie
Kathy Bauer, Board of Selectmen Representative

Absent: Laura Horning
Len Harten, Alternate

Secretary: Peg Ouellette

The applicant, St. Joseph Hospital of Nashua, the owner of Map 31, Lot 32-1, located at 442 and 444 Nashua St, in the Residence A District, is requesting a Variance from Article VII, Section 7.06.7:G to allow a monument sign to denote the Milford Medical Center and street address, where the monument sign will not exceed 21 SF (per side) where 6 SF (per side) is allowed.

Minutes Approved on February 12, 2015

Zach Tripp, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He informed all the procedures of the Board and introduced the Board. He read the notice of hearing into the record. The list of abutters was read and no abutters were present. J. Bradford Westgate, attorney with Winer and Bennett, LLP appeared on behalf of the applicant. Kyle Burchard of Meridian Land Services and Bob Demers of St. Joseph Hospital were present.

Z. Tripp informed Attorney Westgate that, there being only four Board members present and three affirmative votes being needed for approval, he could sign a waiver and proceed with a four-member board or he could elect to table the case until the next regularly-scheduled meeting.

Atty. Westgate opted to proceed this evening and signed a waiver. He requested that the evidence from the previous Case #2014-21 be incorporated into this case. They are talking about a monument sign for this case. The existing monument sign is to scale with the proposed new sign. It will have blue and white lettering, to be 21 SF and the existing is 45 SF whole. Proposed sign is less than half the current and lower in height. The location will be westerly side of the entrance. The previous sign was in front down toward the Oval and the proposed sign will be east.

Z. Tripp asked how long the current monument sign has been in place.

B. Demers said since the 80's.

Atty. Westgate said at least until 1990 sign but that is a guess. Unless the Board had questions on background of the specific elements for the monument sign or property in general, he would be happy to go through the criteria after the public comment.

Z. Tripp asked for questions from the Board. There were none. He opened the meeting for public comment. There were none. He closed the public comment portion of the meeting.

Atty. Westgate briefly went through the five criteria, paraphrasing the application.

1. Granting the variance would not be contrary to the public interest because:

It is not contrary to the public interest to allow a monument sign to identify the existence of the center, especially in the new location at the entrance drive. It is also not contrary to permit a new monument sign replace an existing monument sign where the new monument sign is less than half the size and lower in height. It will identify the medical center and include address of the property which is a requirement.

Z. Tripp asked if the old sign had the address.

Atty. Westgate said it does and whether you think of a variance as 18 ft or 21 ft, they put in the overall SF for the application.

2. The use is not contrary to the spirit of the ordinance because:

The purpose of the ordinance is public health and safety. In the signage ordinance, signage for economic development and communication to the public and promote traffic and pedestrian safety. The spirit is observed by allowing appropriately designed monument sign that alerts public to where the new center is, next to the driveway. It will be internally lit, with just lettering, lit lettering on entry side so people can see it. The Center has existed in Milford on this site for over 35 years as a non-residential use in the Residence A District on that side and Limited Commercial on the other side. There are monument signs on both sides.

3. Granting the variance would do substantial justice because:

Substantial justice is done to allow a modest sign to replace one twice that size to properly identify the Center. There is no benefit if denied. There is harm to the public because a modernized sign would not be permitted. They would have come up with a Plan B and they don't want to be unaesthetic with the overall sign.

4. The proposed use would not diminish surrounding property values:

Granting the variance would not diminish the value of surround properties because if there were significant residential property which were pure residential district, even in that case, taking all out and putting a new one in would be beneficial, and that is the case in this mixed-use area.

5. Denial of the variance would result in unnecessary hardship.

A). "Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:

i). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

ii) and; The proposed use is a reasonable one because:

The special conditions of this property – mixed use street has signage along it. The Center has existed for many years and the existence of the present sign for all these years are special conditions. Regarding purposes of the ordinance is promoting safe travel, pedestrian safety and for change to allow for resumption of business in a non-residential property. If the 6 SF criteria were imposed and they could not do a new monument sign it would be contrary to the purpose. They are putting in a better, smaller, or aesthetic sign near the entrance. Reasonable use is evident especially in this area with monument signs on both sides of the street.

Z. Tripp asked if there were further questions from the Board.
F. Seagroves the only question was about it being lit; that was answered.
J. Dargie asked if the sign would be lit 24 hours or off some hours.
B. Demers stated probably on until 11 p.m. and start in the early morning.
Z. Tripp proceeded to discussion of the five criteria.

1. Would granting the variance not be contrary to the public interest?

F. Seagroves – yes. Handbook says to demonstrate public benefit if granted and show no harm. There is no harm in going from a larger sign to a smaller.

J. Dargie said yes, it would not be contrary to the public interest.

M. Thornton said yes, the sign will be easier to read. Square footage is being reduced, which is more consistent with the ordinance than is the current sign.

Z. Tripp agreed with the Board. It can be granted without being contrary to the public interest. It doesn't alter the character of the neighborhood because there is already a monument sign there and the proposed one is smaller.

2. Could the variance be granted without violating the spirit of the ordinance?

M Thornton – yes. It brings it more into compliance with the ordinance than the current sign and it is much easier to read.

J. Dargie said it would not be violating the spirit.

F. Seagroves – yes. The handbook mentions health, safety and general welfare of the community. They need a bigger sign to show where the entrance is. There are so many signs and people are not familiar with the area.

Z. Tripp it could be granted without violating the spirit. Given location, size of the lot this is in the spirit of the ordinance and will not threaten the health, safety and general welfare.

3. Would granting the variance do substantial justice?

F. Seagroves – yes. Any loss to the individual outweighed by gain to the general public is just. Public is gaining something. The sign is smaller but loss to the individual would be more than gain to the public interest.

J. Dargie – it is substantial justice.

M. Thornton – If we deny it, it is likely the old sign will stay, which is twice as big.

Z. Tripp agreed with the Board. The handbook refers to gain to the public outweighed by loss to the applicant. The public would probably lose by denying. Therefore, it is substantial justice. Proposed sign is smaller and is lit and probably looks nice and more modern, which is better for the neighborhood.

4. Could the variance be granted without diminishing the value of abutting property?

J. Dargie – yes, there is no really close abutter where this sign will be located. It will be lit. It is appropriate.

M. Thornton – He sees no negative impact, only positive. Yes, it can be granted without diminishing value.

F. Seagroves – yes. With the sign turned off after 11 p.m. or so, it should not bother anyone. There is only one house across the street. Doesn't think it will diminish value.

Z. Tripp agreed. Current property already has a sign. Change to a smaller more attractive sign would not decrease value.

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

- A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;
ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

F. Seagroves – re B, that there would be a hardship to deny. It is a large complex. People would slow down trying to find them at the entrance and it would probably be dangerous.

J. Dargie – yes, no fair and substantial relationship exists between the general public purposes of the ordinance provisions and the specific application of that provision to the property, and the proposed use is a reasonable one. She agreed.

M. Thornton – yes, Fair and substantial relationship and the proposed use is reasonable. Unnecessary hardship would exist to deny it.

Z. Tripp agreed with the Board. What is unique is a hospital in Residence A. Across the street is a limited business zone and down Nashua St. there are monument signs in that neighborhood.

Having this property makes it unique. Re fair and substantial justice, it is a pre-existing sign. If it were across the street it would be conforming. Given the size and location of the property it is reasonable. It is actually smaller and more modern. Denying would be unnecessary hardship.

Z. Tripp called for a vote.

1. Would granting the variance not be contrary to the public interest?

F. Seagroves – yes M. Thornton – yes J. Dargie – yes Z. Tripp - yes

2. Could the variance be granted without violating the spirit of the ordinance?

M. Thornton – yes J. Dargie – yes F. Seagroves – yes Z. Tripp - yes

3. Would granting the variance do substantial justice?

J. Dargie – yes F. Seagroves – yes M. Thornton – yes Z. Tripp - yes

4. Could the variance be granted without diminishing the value of abutting property?

F. Seagroves – yes M. Thornton – yes J. Dargie – yes Z. Tripp - yes

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;

ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

M. Thornton – yes J. Dargie – yes F. Seagroves – yes Z. Tripp – yes

Z. Tripp asked for a motion to approve Case #2104-22.

M. Thornton made a motion to approve.

J. Dargie seconded.

Final Vote:

M. Thornton – yes J. Dargie – yes F. Seagroves – yes Z. Tripp – yes

Z. Tripp informed applicant of approval and reminded him of the 30-day appeal period.